IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.2575 OF 1984

WITH

CIVIL APPLICATION NO.646 OF 1994
IN
SPECIAL CIVIL APPLICATION NO.2575 OF 1984

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

I. J. PATHAN

Versus

DIRECTOR GENERAL & INSPECTOR GENERAL OF POLICE & ORS.

Appearance:

1. Special Civil Application No. 2575 of 1984

MR. K.N. RAVAL for Petitioner

MR. B.M. MANGUKIYA for Petitioner

MR. M.S. RAO, AGP for Respondent Nos. 1-3

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 23/03/2004

ORAL JUDGEMENT

1. It is a hard reality of life that the matter filed in the year 1984, processed on 18th May, 1984, is reaching its final hearing in the year 2004.

2. The matter is filed seeking a direction against the respondents to desist from dismissing the petitioner in continuance of the Memorandum dated 9th February 1984 issued by the first respondent (Director General of Police) and further quashing and setting aside the decision of the first respondent dismissing the petitioner from service and further quashing and setting aside the entire enquiry proceedings.

Along with the aforesaid main relief, it was prayed by way of interim relief that, "pending the hearing and final disposal of this petition, to grant interim relief restraining the respondents from dismissing the petitioner or from implementing or continuing to implement any order of dismissal".

3. On 21st May, 1984, the Court passed the following order:

"Notice to the Resps. returnable on 25-6-84.
Ad-interim relief in terms of Para 16B. Direct Service."

Thereafter, on 27th February, 1985, `Rule' was issued returnable on 18th March, 1985 and ad interim relief was ordered to continue. Despite this interim relief, the respondents could find time to file their affidavit in reply only in the year 1988, pointing out that, `the order of dismissal dated 9th May, 1984 was already passed before the petitioner approached this Court by way of this petition on 18th May, 1984, but, on account of the interim relief granted by this Court, the said order was not served to the petitioner'.

4. Despite the said order being on record of this case, since 1988, the petitioner has not chosen to amend the petition and challenge the order of punishment. For the first time in the year 1994, the respondent-Director General of Police and others filed Civil Application No.646 of 1994 for vacating the interim relief granted on 21st May, 1984, but then, the said Civil Application was ordered to be listed along with the main matter. Thereafter, the petitioners filed Civil Application No.10710 of 2000 for amendment, which was allowed by an order dated 6th December, 2000, which reads as under:

"The original petitioner has filed the present civil application for amendment in the main petition. Considering the averments made in this application, prayer 2(A) is granted. Petitioner is directed to carry out the amendment within one week from today and to supply amended copy of the petitioner to the respondents within ten days from today. It will be open for the respondents to file additional/further reply to the petition after it is being amended, if they so desire and to take all contentions in law. With these observations, this civil application is disposed of with no order as to costs.(sic)

(emphasis supplied)

It is to be noted that this amendment is not carried out till date and as the amended copy of the petition is not supplied, the respondents have not filed any reply to the contents of the said Civil Application.

5. The petitioner then filed Civil Application No.6145 of 2003 praying for fixing an early date of hearing, which was rejected by this Court on 2nd September, 2003.

6. Today, when the matter is called out, Mr.B.M.Mangukia, learned Advocate for the petitioner, submitted that the petition is akin to another Special Civil Application No.2975 of 1984 filed by a co-delinquent of the petitioner. The learned Advocate submitted that the said petition is allowed by this Court by judgement and order dated 5th October, 1999 and a similar order is required to be passed in this case also.

7. This Court has declined to examine this question because in the present petition, the order of punishment is not challenged. This Court has, therefore, deemed it proper to relegate the petitioner to the remedy of departmental appeal against the order of punishment. The learned Advocate submitted that the order of punishment is not served to the petitioner till date. The Department is, therefore, directed to serve the order of punishment to the petitioner on his furnishing the residential address within 10 days from the date of receipt of this judgement and order. On service of the order of punishment, it will be open for the petitioner to challenge the same in accordance with law.

The learned Advocate submitted that in view of the fact that the order of dismissal dated 9th May, 1984 is not implemented for all this time, it may not be

implemented by the respondent Authorities on service of the same to the petitioner and the petitioner be given an opportunity to file an appeal and pray for stay of that order.

8. Without examining the merits and pronouncing on the same, only in light of the fact that the order of dismissal dated 9th May, 1984 is not implemented for all this time i.e. by now about 20 years, it is directed that it be not implemented for a period of 10 days from the date of service on the petitioner so as to enable him to request for stay of the order before the Departmental Authority.

In case the petitioner fails to supply his residential address, within the time prescribed, it will be open for the Department to serve the order of punishment dated 9th May, 1984 to the learned Advocate representing the petitioner before this Court as he has consented for the same.

With the aforesaid observations, this petition is disposed of. Rule is discharged. No order as to costs.

9. In view of disposal of the main Special Civil Application, Civil Application No.646 of 1994 does not survive and the same is disposed of accordingly.

(Ravi R. Tripathi, J.)
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